IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRI. APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1054 OF 1988

The State of Maharashtra ... Appellant

V/s

1. Ramesh Narayan Pawar
   R/at Vadgaon-Chenand,
   Tal. Khed, Dist. Pune.

2. Pratap Madhavrao Snadbhor,
   R/at Shethana Bldg.,
   Deccan college Road,
   Yeravad, Pune - 6.

3. Nilesh Vijaykumar Appadore,
   R/at 169, Deshmukh Nagar,
   Deccan College Road,
   Yeravada, Pune - 6.

4. Karamjitsingh Mukhtiarsingh,
   At 177, Shethana Bldg.,
   Deccan College Road,
   Yeravada, Pune - 6.

5. Laxman Dattatraya Gore,
   R/at Devachi Alandi,
   Tal. Khed, Dist. Pune.

6. Milind Dnyaneshwar Joshi,
   R/at Devachi Alandi,
   Tal. Khed, Dist. Pune. ... Respondents
   (Ori.Accsed/Appellant Nos. 1 to 6).

Shri B.H. Mehta, Addl. Public Prosecutor for the appellant State.

Ms. Revati Dere for the Respondent Nos. 1 to 5.

Shri A.B. Vagyani for the respondent No.6.

ALONGWITH

CRIMINAL REVISION APPLICATION NO. 430 OF 1988

Shri Popat Vadgaonkar ... Applicant

V/s

1. Ramesh Narayan Pawar
R/at Vadgaon-Chenand,
Tal. Khed, Dist. Pune.

2. Pratap Madhavrao Snadbhor,
R/at Shethana Bldg.,
Deccan college Road,
Yeravad, Pune - 6.

3. Nilesh Vijaykumar Appadore,
R/at 169, Deshmukh Nagar,
Deccan College Road,
Yeravada, Pune - 6.

4. Karamjitsingh Mukhtiarsingh,
At 177, Shethana Bldg.,
Deccan College Road,
Yeravada, Pune - 6.

5. Laxman Dattatraya Gore,
R/at Devachi Alandi,
Tal. Khed, Dist. Pune.

6. Milind Dnyaneshwar Joshi,
R/at Devachi Alandi,
Tal. Khed, Dist. Pune.

7. The State of Maharashtra. ... Respondents

Shri S.A. Ingawale for the applicant.

Ms. Revati Dere for the respondent Nos. 1 to 5.

Shri A.B. Vagyani for the respondent No.6.

Shri B.H. Mehta, Addl. Public Prosecutor for the respondent No.7 State.

CORAM: R.M.S. KHANDEPARKAR &
P. V. KAKADE, JJ.

DATED: 1ST APRIL, 2005.

ORAL JUDGMENT (Per Kakade, J.):

1. This appeal is preferred by the State against the judgment and order dated 5.9.1988 passed by the Addl. Sessions Judge, Pune in Criminal Appeal No. 626 of 1987 wherein the appeal preferred by the present appellants against the conviction and sentence passed against them by the Court of Assistant Sessions Judge was set aside and they were acquitted of all the charges levelled against them.

Hence, the State has come in the present appeal against the impugned order of acquittal passed by the Addl. Sessions Judge. Also one of the witnesses in the Sessions trial who was a injured person has preferred the said revision, both against the accused persons and the State. Hence both the proceedings are being heard and disposed of together.

2. The facts giving rise to the present case in brief are thus -

Accused No.1 Ramesh Narayan Pawar is a son of the then

sitting M.L.A. who was elected from Khed constituency in Pune District. Accused Nos. 2 to 6 are his friends from village Alandi. Complainant Popat Vadgaonkar is also a petitioner in the revision application and deals in transport business at Alandi. He was residing jointly with his brothers namely Ramesh, Suresh, Chandrakant and Prakash. It is the prosecution case that there were some sort of disputes prior to the incident dated 29.8.1986. Two months prior to this incident quarrels ensued between complainant's bvrother Chandrakant and accused No.1 at S.T. Stand. It is alleged that even before four days of this incident, the accused No.1 had threatened the complainant on phone repeatedly. However, no report of the incident was given to the police because the same disputes were patched up because of the assurance of good conduct was given by uncle of accused No.1.

On 29.8.1986 at about 10 p.m. complainant and his brother Prakash were standing in Nagarpalika chowk, Alandi. The said chowk is just opposite to their business and residence premises. Office of Nagarpalika is also situated adjacent to the said chowk. It is alleged that, six persons arrived on two motor cycles on the spot. The said motor cycles were of the company

viz. Bullet and Indo Suzuki. The said motor cycles were parked near Nagarpalika office and near the shop of Waghmare respectively. Three persons each from two motor cycles came near the complainant and his brother Prakash. The three persons who came on Bullet motor-cycle were possessing weapons. It is the case of the prosecution that the persons who arrived on Bullet motor-cycle were accused Nos. 2, 3 and 4. Accused No.4 possessed sword, accused No.2 possessed cycle chain and the third one possessed hockey stick. The other three persons who arrived on the spot by Indo-Suzuki motor-cycle were said to be accused Nos. 1, 5 & 6. As soon as both the motor-cycles simultaneously reached to the spot, the accused Nos. 1 to 6 came and accused No.1 then pointed out both the complainant and his brother to his other friends i.e. accused Nos. 2 to 6 and directed them to see the complainant and his brother properly. Immediately, as soon as 5 other accused received such signal from accused No.1, accused Nos. 1, 5 and 6 started abusing the complainant and his brother. Accused No.1 gave a kick blow to the complainant, accused No.3 gave a blow with hockey stick on the hands of the complainant. Simultaneously accused No. 4 started beating with sword to the complainant’s brother Prakash. Complainant tried to snatch the said sword but

accused No.2 Sandbhor is said to have beaten with cycle chain to the complainant. At about the same time, accused No.4 beat with sword to complainant on his back. It is further alleged by the prosecution that the accused No.4 gave a severe blow with sword to the complainant's brother Prakash on different portions of the body including forehead and hand. Accused No.4 wanted to hit with sword to the complainant's brother Prakash but the blow was resisted by his hand. Both, the complainant and his brother receive pleeding injuries. Their clothes were stained with blood. The complainant and his brother raised cry for help. Accused persons wanted to run away on their respective motor cycles but the complainant snatched the plug wire from the bullet motor cycle and, therefore, the assailants could not use it for running away from the spot. However, they ran away on foot. Rest of three accused persons used their Indo Suzuki motor-cycle for running away from the spot. Many persons assembled on the spot and tried help for the injured. The persons who assembled at the spot saw some of the assailants running away from the spot. The injured were immediately brought to the Sassoon Hospital at Pune in a car. Complainant and his brother were admitted there for treatment. Wireless message was flashed from Pune

to Chakan Police Station informing the incident. The information from Chakan police Station reached to the Sassoon Hospital at about midnight on 30.3.1986. The complaint was recorded and reduced in writing at about 4 a.m. on 30.8.1986 in the Sassoon Hospital in Ward No.7 where complainant Popat was admitted and his brother Prakash was unconscious. Police officer of the rank of Dy.S.P. Mr. Naik visited the Sassoon Hospital. He immediately went to the house of accused Nos. 2 and 3 and arrested them. Thereafter he went to Alandi. The complaint was sent to Chakan Police Station for registration of the offence, where the offences were registered under Sections 307, 147, 148, 149, 324, 326 and 504 read with 34 of the I.P.C. During the course of the investigation, rest of the accused persons were arrested. Statements of witnesses came to be recorded and spot panchnama was prepared, Bullet motor-cycle found on the spot was seized, medical certificates of the injured persons were collected. The hockey stick was seized from the house of one of the accused at the instance of information alleged to have been given him in presence of panchas. The blood stained clothes of the complainant and his brother were also seized and the seizure articles were sent to the chemical analyzer for examination whose report was received and is part of the

record. On completion of the investigation, chargesheet was submitted to the Magistrate on 21.11.1986.

3. The learned Magistrate committed the case to the Court of Sessions at Pune. The case was tried by the Assistant Sessions Judge, Pune, who framed the charge against the accused persons for the impugned offences. The accused persons pleaded not guilty to the charges. The defence of the accused persons was that of total denial of any involvement in the said incident. The prosecution led its evidence at length before the Assistant Sessions Judge, Pune.

On the basis of available evidence, the Asstt. Sessions Judge, Pune came to the conclusion that all the accused were guilty of the charges framed against them and accordingly passed the order of conviction and sentence against them.

4. An appeal was preferred against the said judgment and order which came before the Sessions Judge, Pune. The learned Addl. Sessions Judge heard the appeal and came to the conclusion, for the reasons recorded in details, that the learned Trial Judge erred in holding that the accused persons were guilty of any offences

charged against them and consequently all the accused persons were acquitted by the learned Addl. Sessions Judge of all the charges levelled against them. Hence the present appeal is preferred by the State against the order of acquittal recorded by the Addl. Sessions Judge.

5. The original complainant witness Shri Popat in the case, has also filed a separate revision application against the order of acquittal.

6. We have heard the learned A.P.P. for the State as well as the learned advocate for the respondents at length with whose help we have also perused the entire evidence on record. We may note at this stage juncture that pending the hearing of this appeal, the injured witnesses involved in the case including the complainant and the accused respondents came before the Court with submission that they have compromised the matter and do not wish to prosecute the cause any further. In support of this version, they have filed the application alongwith affidavits of both the injured witnesses including the complainant. The application appears to be signed by both the injured witnesses as well as the respondents who appear to have settled the dispute out

of the Court. However, since the offence under Sec. 307 of the I.P.C. is non-compoundable, there was no question of accepting the factum of compromise between the parties and hence we proceeded to hear the appeal on merits.

7. At the outset, it may be noted that the defence of the accused persons is that of total denial of any involvement in the said incident and it is the defence version that they are implicated in the case falsely and merely on suspicion. On the other hand, the prosecution case is armed with evidence of two eye-witnesses as well as other witnesses who reached just after the incident and stated to have seen the accused persons running away from the scene of incident. Therefore, the evidence of the prosecution is divided into two parts, one regarding the ocular evidence and other regarding evidence pertaining to witnesses who have seen the accused persons running away in the night. It is not in dispute that no indentification parade was held by the investigating officer inspite of the fact that the incident took place during night time. On perusal of the judgment of the learned Additional Sessions Judge, it is apparent that alongwith other norms, he has heavily relied upon the fact that no identification of

accused persons was proved in order to bring home the guilt and there were some technical details in the sense that in case of some of the accused persons they were not given the opportunity to explain the allegations against them in the course of statement recorded under Sec. 313 of the Cr.P.C. and, therefore, they were deprived of such opportunity and, therefore, their cause is prejudiced.

8. Turning to the ocular evidence on record, it is to be noted that the prosecution case is founded on the evidence of PW-5 Popat and PW-6 Prakash, brothers of each other. Perusal of the testimony of Popat reveals that he has tried to give one perfect picture of the incident and the role played by each accused person. Similarly, evidence of PW-6 Prakash corroborates the evidence of Popat on all material particulars as well as the injuries suffered by both the said witnesses. They have stated that they have identified accused Nos. 1, 5 & 6 as well as accused No.2. Accused No.3 is described as a man being stout and black in complexion and accused No.4 was identified as a Sardarji. Witness Popat has stated that all the accused persons assaulted him with sword, cycle chain, hockey stick and kick blows.

However, critical perusal of his testimony vis-a-vis the circumstances revealed from the record, however, depict different picture. Though he stated to have been assaulted with sword, cycle chain, hockey stick and kick blows, the medical evidence shows that there was only one incise injury on his left scapular region vide Exh.47. Further more, it is quite unnatural that he has not disclosed to anybody about the accused persons involved in the incident prior to recording the complaint, not even to brother Chandrakant who was present on the spot for about 25 minutes till Ramesh brought the car. He has also did not reveal the names of the assailants after he knew them to the medical officer at Sassoon Hospital while history of the incident was recorded by the doctor and finally he did not refuse the names of the police personnel at Sassoon Hospital Police Chowky though he had opportunity to do so. Similar is the position with regard to the evidence of PW-6 Prakash who has testified to the effect that all the accused assaulted him with kick and fist blows. However, minute perusal of his evidence shows that the alleged earlier quarrel which had taken place was between Chandrakant and accused No.1 and, as such, there was no reason or motive to assault Popat as well as Prakash and he has admitted that there was no quarrel

between himself and accused No.1. His evidence is also conspicuously silent regarding assault, if any, made by accused Nos. 1, 5 and 6 by kick blows. It is also to be noted that his statement in the form of dying declaration was recorded at the hospital. It appears from the record that the learned Assistant Sessions Judge sought to rely upon the said statement as substantive piece of evidence, however, the learned Addl. Sessions Judge, in appeal, rightly discarded that evidence by the record, obviously because PW-6 had survived and, therefore, his so-called dying declaration recorded by the police assumes status of simple statement under Sec. 161 of the Cr.P.C. and could not be read in evidence. It is also to be noted that even though the evidence suggests presence of some independent witnesses in the vicinity after the quarrel ensued, the prosecution has not examined any independent witness to corroborate the testimony of either complainant Popat or witness Prakash, especially when there appears motive for Popat to falsely implicate the accused persons due to business rivalry between the family of accused No.1 and himself.

9. The position, further aggravates against the prosecution if we consider the medical evidence on

record. PW-10 Dr. Shivram Waghmare has described injury of PW-5 vide Exh.47 as, "incised wound on the left scapular region" and has stated that it must have caused by hard and sharp object. So far as Prakash's injury is concerned, vide Exh.49, those are - (i) incised wound on the left pariatal region; (ii) incised wound on forehead left side; (iii) incised wound on the left arm; and (iv) incised wound on right forearm, and are stated to have been caused by hard and sharp object. Now it is clear that witness Popat has given the history and the medical officer has stated that both the witnesses are examined by him. However, the medical officer did not find any other injury on the person of Popat nor Popat complains of any pain and, therefore, it belies the prosecution case of assault by the accused persons. We are aware of the legal position in this regard that when there is contradiction between medical evidence and ocular evidence, the ocular evidence is required to be accepted. However, in this particular case, the ocular evidence itself has become suspect for want of credibility as well as independent corroboration and, therefore, the discrepancy with regard to the medical evidence vis-a-vis the ocular version assumes more importance which renders the prosecution case weak.

10. The next set of witnesses is in respect of those who reached the scene of incident immediately after the assault and saw the culprits running away. PW-11 Chandrakant, brother of complainant, PW-8 Sanjay, complainant's nephew and PW-7 Kantilal, are the said witnesses. Perusal of their evidence is not sufficient to convince us regarding the identity of the accused persons, firstly, because it was night time and secondly because except a witness PW-7 Chordiya, all others are relatives of the complainant and witness Prakash. It is true fact that the witness is a close relative and consequently partisan witness cannot be a ground to reject his testimony, however, it is also imperative that foundation has to be led if a plea of false implication is made and in such cases the Court has to adopt a very careful approach and enlighten the evidence to find out whether it is cogent and credible. In the present case, the testimonies of both the injured including the complainant, who are brothers of each other, are found to be doubtful regarding the identity of the culprits and, therefore, further corroboration sought to be obtained from relative witnesses in order to show that they had seen the culprits while running away cannot be accepted as credible and, therefore, as a matter of abandoned precaution has to be discarded from

consideration.

11. Therefore, we are of the considered view that the prosecution evidence on record is not sufficient to inspire confidence and, therefore, the respondent accused persons deserve benefit of doubt. We have perused the judgment and reasoning adopted and findings recorded by the Addl. Sessions Judge while recording the order of acquittal and we must note that we find no perversity in such reasonings adopted by him while coming to the conclusion. It is the cardinal principle of criminal jurisprudence that if the evidence on record is sufficient to show two distinct possibilities of happenings, one in favour of the accused and one against the accused, then the one which is in favour of the accused has to be adopted. This is what has been done by the learned Addl. Sessions Judge and, therefore, we find no reason to interfere in the said judgment and order passed by him.

12. In the result, the appeal is hereby dismissed. Consequently, the criminal revision application also stands dismissed. The bail bonds of the respondents/ accused, who are on bail, also stand cancelled.

(R.M.S. Khandeparkar, J.)

(P. V. Kakade, J.)